



Signed: November 09, 2009

*Leslie Tchaikovsky*

LESLIE TCHAIKOVSKY  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re

No. 08-47480 TD  
Chapter 7

GERALDINE L. VAN DAMME,

Debtor.

HAMMER 1994 TRUST, et al.,

A.P. No. 09-4125 AT

Plaintiffs,

vs.

GERALDINE L. VAN DAMME,

Defendant.

**MEMORANDUM OF DECISION**

In the above-captioned adversary proceeding (the "Bankruptcy Court Action"), Plaintiffs Hammer 1994 Trust, Bill C. Hammer, Trustee, and Bill C. Hammer, individually (the "Plaintiffs") seek a determination that they are entitled to a nondischargeable judgment against the defendant Geraldine L. Van Damme ("Geraldine") pursuant to 11 U.S.C. § 523(a)(6). Geraldine filed a motion for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil

1 Procedure. The Plaintiffs filed a countermotion for summary judgment  
2 pursuant to Rule 56 Of the Federal Rules of Civil Procedure.<sup>1</sup> The  
3 motions came before the Court on October 5, 2009. Appearances were  
4 stated on the record. At the conclusion of the hearing, the Court  
5 took the motions under submission. Having now duly considered the  
6 evidence presented and argument made, for the reasons stated below,  
7 the Court concludes that both motions should be denied.

#### 8 **SUMMARY OF FACTS AND PROCEDURAL HISTORY**

9 The complaint in the Bankruptcy Court Action (the "Bankruptcy  
10 Court Complaint") alleges that, in January 2004, Geraldine and her  
11 husband, Armin Dirk Van Damme, ("Armin") (collectively the "Van  
12 Dammes") purchased real property located in Las Vegas, Nevada (the  
13 "Van Dammes' Real Property"). It further alleges that the Plaintiffs  
14 have been the owners of real property located in Las Vegas since 1988  
15 (the "Plaintiffs' Real Property"), and that the Plaintiffs' Real  
16 Property is located adjacent to the Van Dammes' Real Property.

17 The Bankruptcy Court Complaint further alleges that, in the mid-  
18 1980s, the developers of the Van Dammes' Real Property erected a  
19 stone wall along the common boundary line between the two properties  
20 (the "Van Damme Wall"). Thereafter, the developers of the  
21 Plaintiffs' Real Property erected a retaining and privacy wall on the  
22 Plaintiffs' Real Property, set in from the boundary line by  
23 approximately one foot, leaving a gap between the two walls (the "Gap  
24

---

25  
26 <sup>1</sup>Rules 12(c) and 56 are made applicable to this proceeding by  
Rules 7012 And 7056, respectively, of the Federal Rules of  
Bankruptcy Procedure.

1 Land"). The Bankruptcy Court Complaint alleges that, at all times  
2 relevant to State Court Complaint, the Gap Land belonged to the  
3 Plaintiffs.

4 The Bankruptcy Court Complaint further alleges that, sometime  
5 after April 2004, the Van Dammes trespassed upon the Plaintiffs' Real  
6 Property by partially tearing down the Van Damme Wall and  
7 constructing a pool grotto, in part, on the Plaintiffs' Real  
8 Property. Upon discovering the trespass, on June 22, 2004, the  
9 Plaintiffs advised the Van Dammes of their mistake and requested that  
10 the work cease. The Van Dammes refused to comply with this request.  
11 The Plaintiffs then posted a notice ordering the Van Dammes to cease  
12 the trespass and mailed a copy to the Van Dammes. The Van Dammes  
13 removed the posted notice, and the work continued. Numerous  
14 subsequent efforts by the Plaintiffs to induce the Van Dammes to  
15 cease construction on the Gap Land were similarly ignored.

16 The Bankruptcy Court Complaint further alleges that, on October  
17 1, 2004, the Plaintiffs filed a lawsuit against the Van Dammes in  
18 state court in Nevada (the "State Court Action"). A copy of the  
19 complaint (the "State Court Complaint") filed in the State Court  
20 Action is attached as an exhibit to the Bankruptcy Court Complaint.  
21 In the State Court Complaint, the Plaintiffs asserted claims of  
22 Trespass, Quiet title, Slander of Title, and Battery against the Van  
23 Dammes. They also sought an injunction requiring them to cease  
24 construction of the pool grotto and to return the Plaintiffs' Real  
25 Property to its prior condition.  
26

1 In response, the Van Dammes filed a counterclaim against the  
2 Plaintiffs, asserting claims for quiet title, malicious use of  
3 process, and trespass (the "State Court Counterclaim"). The  
4 Plaintiffs filed two motions for partial summary judgment, one  
5 directed at the quiet title claim and the other directed at the  
6 malicious abuse of process and trespass claims. The Van Dammes did  
7 not oppose the first motion but did oppose the second one.

8 On July 8, 2008, the state court issued two orders granting  
9 partial summary judgment in favor of the Plaintiffs and against the  
10 Van Dammes. The order on the first motion ("PSJ Order One") resolved  
11 the Van Dammes' quiet title claim, determining that the Gap Land  
12 belonged to the Plaintiffs. It also determined, sua sponte, the  
13 claim of quiet title that the Plaintiffs had asserted in the State  
14 Court Complaint. The second order ("PSJ Order Two") granted partial  
15 summary judgment in favor of the Plaintiffs on the Van Dammes' claims  
16 for malicious use of process and for trespass. Copies of PSJ Orders  
17 One and Two are attached to the Bankruptcy Court Complaint.

18 The state court tried the remaining claims over several days in  
19 August and October 2008. A final trial date was set for December 22,  
20 2008. On December 16, 2008, Geraldine commenced the above-captioned  
21 chapter 7 case. As a result, the State Court Action was stayed as to  
22 Geraldine. However, the trial continued and was concluded as to  
23 Armin. The state court took the matter of damages under submission.<sup>2</sup>  
24

---

25 <sup>2</sup>Armin filed his own chapter 7 case in this court before the  
26 state court had issued its decision on the amount of damages.  
However, the Court granted the Plaintiffs' motion for relief from  
the automatic stay to permit this decision to be effectively

The Bankruptcy Court Complaint alleges that Geraldine's conduct in creating and continuing to maintain the above-described trespass on the Plaintiffs' Real Property was willful and malicious and caused injury to the Plaintiffs and to the Plaintiffs' Real Property, giving rise to a claim that should be excepted from her bankruptcy discharge pursuant to 11 U.S.C. § 523(a)(6).

## DISCUSSION

As recited above, the Van Dammes filed a motion for judgment on the pleadings. The Plaintiffs filed a motion for summary judgment. The Court will address each motion in turn.

### A. MOTION FOR JUDGMENT ON THE PLEADINGS

Rule 12(c) of the Federal Rules of Civil Procedure provides that a motion for judgment on the pleadings may be filed after the pleadings are closed but must be filed early enough so as not to delay trial. The legal standard applicable to a motion for judgment on the pleadings is the same legal standard applicable to a motion to dismiss for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure. See Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc., 896 F.2d 1542, 1550 (9<sup>th</sup> Cir. 1989).

To survive a motion to dismiss for failure to state a claim, a complaint must satisfy the notice pleading requirements of Rule 8 of the Federal Rules of Civil Procedure. Holloway v. Best Buy Co., 2009 WL 1533668, #2 (N.D. Cal. May 28, 2009).<sup>3</sup> Rule 8 requires a claim for

issued.

<sup>3</sup>Rule 8 is made applicable to this proceeding by Rule 7008 of the Federal Rules of Bankruptcy Procedure.

1 relief to contain "a short and plain statement of the claim showing  
2 that the pleader is entitled to relief...." Fed. R. Civ. Proc. 8.  
3 As with a motion for summary judgment, "all allegations of fact by the  
4 party opposing the motion...[must be] accepted as true,  
5 and...construed in the light most favorable to...[the opposing] party.  
6 Qwest Communs. Corp. v. City of Berkeley, 208 F.R.D. 288, 291 (N.D.  
7 Cal. 2002).

8 Geraldine contends that the allegations of the Bankruptcy Court  
9 Complaint, even if taken as true and construed in the light most  
10 favorable to the Plaintiffs, do not satisfy the rigorous standard for  
11 nondischargeability under 11 U.S.C. § 523(a)(6) as established by  
12 Kawaauhau v. Geiger, 523 U.S. 57, 64 (1998). In Geiger, the Supreme  
13 Court held that "debts arising from recklessly or negligently  
14 inflicted injuries do not fall within the compass of § 523(a)(6)."  
15 Id. at 64. Moreover, according to Geraldine, the allegations of the  
16 Bankruptcy Court Complaint are not sufficiently specific to state a  
17 claim for willful and malicious injury and rather are simply  
18 conclusory. The Court disagrees.

19 The Court finds the allegations of the Bankruptcy Court Complaint  
20 clearly sufficient to satisfy the Geiger standard. While it may have  
21 been negligent or reckless, rather than willful and malicious, for the  
22 Van Dammes to begin the construction of the pool grotto on the  
23 Plaintiffs' Real Property, their refusal to cease the construction and  
24 to dismantle it when informed of the true boundary line can certainly  
25 be construed to be willful and malicious. The injury to the  
26

1 Plaintiffs and to the Plaintiffs' Real Property as a result of the Van  
2 Dammes' conduct is self-evident.

3 Geraldine also contends that the allegations of the Bankruptcy  
4 Court Complaint are insufficient to state a claim against her as  
5 opposed to a claim against Armin. She asserts that it is clear from  
6 the PSJ Orders One and Two that Armin was the person who built the  
7 wall. She notes that the Bankruptcy Court Complaint blames everything  
8 on "the Van Dammes" as a unit, containing no individualized  
9 allegations of misconduct by Geraldine. She contends that Nevada law  
10 does not permit Armin's misconduct to be imputed to her.

11 This argument also fails. In referring to the Van Dammes  
12 collectively, the allegations of the Bankruptcy Court Complaint  
13 necessarily target Geraldine as well as Armin. Although Armin may  
14 have performed the physical acts of construction--an evidentiary fact  
15 that has yet to be established here--the Van Dammes may still have  
16 acted in concert in refusing to remove the construction when they  
17 learned of the boundary line mistake. Thus, Geraldine may be liable  
18 independently of Armin. Construed in the light most favorable to the  
19 Plaintiffs, the allegations state a sufficient claim that she acted  
20 in concert with Armin with respect to the refusal to remove the  
21 construction.

22 Finally, Geraldine argues that, in considering the motion, the  
23 Court should disregard the exhibits to the Bankruptcy Court Complaint.  
24 Normally, a motion for judgment on the pleadings is based solely on  
25 the allegations of the complaint and answer. If extrinsic evidence  
26 is considered, the motion is transmuted into a motion for summary

1 judgment. See Fed. R. Civ. Proc. 12(d). However, a court may  
2 consider exhibits to a complaint consisting of state court pleadings,  
3 of which the court may take judicial notice, without transmuting the  
4 motion into one for summary judgment. See In re Soto, 221 B.R. 343,  
5 347 (Bankr. E.D. Pa. 1998).

6 Geraldine does not necessary challenge this principle. Instead,  
7 she argues that the Court should disregard the state court pleadings  
8 as a sanction for Plaintiffs' violation of the automatic stay. She  
9 contends that Geraldine's filing of her bankruptcy petition  
10 effectively stayed the State Court Action as to Armin as well as her.  
11 In support of this argument, she cites Norwest Financial v. Lawver,  
12 109 Nev. 242 (1993), In re Kimmel, 367 B.R. 174, 182 (Bankr. N.D. Cal.  
13 2007), affirmed, 378 B.R. 630, 635-36 (Bankr. 9<sup>th</sup> Cir. 2007), and In  
14 re Watson, 192 B.R. 238, 241 (Bankr. D. Nev. 1996).

15 None of the cases cited is apposite. Norwest and Kimmel address  
16 the attempt of a creditor holding a claim against a married couple,  
17 which claim was discharged in the bankruptcy case of one of the  
18 spouses, to collect the discharged debt from the after-acquired  
19 community property of the nonfiling spouse: e.g., the nonfiling  
20 spouse's wages. See 11 U.S.C. § 524(a)(3). They reiterate the well  
21 established principle that the discharge of the claim in the  
22 bankruptcy case of a single spouse enjoins its collection from the  
23 after-acquired community property of both spouses. The Watson court  
24 merely makes a passing reference to 11 U.S.C. § 524(a)(3). See  
25 Watson, 192 B.R. at 241.  
26



1           The facts here are entirely distinguishable. The Plaintiffs'  
2 claim against Geraldine has not yet been discharged and, if this  
3 proceeding is successful, will not be. Clearly, the filing of a  
4 bankruptcy petition by Geraldine does not give rise to an automatic  
5 stay enjoining actions against Armin. It does give rise to an  
6 automatic stay protecting Armin's share of the community property as  
7 well as Geraldine's. All of the community property constitutes  
8 property of Geraldine's bankruptcy estate. See 11 U.S.C. § 541(a)(2).  
9 However, by proceeding with trial of the State Court Action as to  
10 Armin only, the Plaintiffs were not attempting to collect their debt  
11 from community property, simply to establish their claim. Thus, the  
12 holdings of the cases cited have no bearing on the issues presented  
13 here.

14           In sum, Geraldine has failed to present a persuasive argument to  
15 support her motion for judgment on the pleadings, and her motion will  
16 be denied.

17 **B. MOTION FOR SUMMARY JUDGMENT**

18           As recited above, the Plaintiffs filed a countermotion to  
19 Geraldine's motion for judgment on the pleadings, seeking summary  
20 judgment on their claim for willful and malicious injury pursuant to  
21 11 U.S.C. § 523(a)(6). Summary judgment is proper when the undisputed  
22 evidence before the Court establishes that there is "no genuine issue  
23 as to any material fact and that the movant is entitled to judgment  
24 as a matter of law." See Fed. R. Civ. Proc. 56, made applicable to  
25 this proceeding by Fed. R. Bankr. Proc 7056.  
26

1           The Plaintiffs base their countermotion on the doctrine of  
2 collateral estoppel. They contend that the state court's rulings in  
3 PSJ Orders One and Two establish that Geraldine's conduct was willful  
4 and malicious injury as a matter of law.<sup>4</sup> They note that the Supreme  
5 Court has held that the doctrine of collateral estoppel applies to  
6 dischargeability actions. See Grogan v. Garner, 498 U.S. 279 (1991).

7           In determining whether a state court ruling establishes a  
8 nondischargeability claim as a matter of collateral estoppel, the  
9 bankruptcy court must give the state court ruling the same preclusive  
10 effect it would be given by the state court. Under Nevada law, three  
11 questions must be answered in determining whether a ruling in a prior  
12 case collaterally estops litigation of the issue in a subsequent case:  
13 "Was the issue decided in the prior adjudication identical with the  
14 one presented in the action in question? Was there a final judgment  
15 on the merits? Was the party against whom the plea is asserted a  
16 party or in privity with a party to the prior adjudication?" Paradise  
17 Palms Community Assoc. v. Paradise Homes, 505 P.2d 596, 599 (Nev.  
18 1973). In addition, the issue decided must have been "actually  
19 litigated" and "necessarily determined" in the prior action. Marine  
20 Midland Bank v. Monroe, 756 P.2d 1193, 1194 (Nev. 1988). If the  
21 issue was "actually litigated" and "necessarily determined" in the  
22 prior action, it is conclusive in the subsequent suit, even if the  
23

---

24           <sup>4</sup>Geraldine initially opposed the Court taking judicial notice  
25 of the PSJ Orders One and Two on the ground that they were not  
26 authenticated. However, when asked at the hearing whether she  
challenged their authenticity, she admitted that she did not and  
simply contended that they did not have a collateral estoppel  
effect on the issues presented in the adversary proceeding.

1 subsequent suit is based on a different legal theory. In re Silva,  
2 190 B.R. 889, 892 (Bankr. 9th Cir. 1995).<sup>5</sup>

3 There is no dispute that the parties to the above-captioned  
4 adversary proceeding were also parties to the State Court Action.  
5 However, Geraldine contends that the PSJ Orders One and Two cannot be  
6 used for collateral estoppel purposes because they do not represent  
7 final judgments. Second, she contends that the issues presented in  
8 this adversary proceeding were not "adjudicated" in the State Court  
9 Action. The Court will address each argument in turn.

10 **1. Is an Order Granting Partial Summary Judgment Sufficiently**  
11 **Final To Be Used For Collateral Estoppel Purposes?**

12 As noted above, one of the requirements for collateral estoppel  
13 is that the judgment rendered in the prior proceeding is final.  
14 Geraldine asserts that an order granting partial summary judgment, by  
15 definition, is not final. In support of this contention, she offers  
16 the following quotation from Lee v. GNLV Corp., 116 Nev. 424, 426  
17 (2000): "[A] final judgment is one that disposes of all the issues  
18 presented in the case, and leaves nothing for the future consideration  
19 of the court, except for post-judgment issues such as attorney's fees  
20 and costs." She notes that an appeal could not be taken from such an  
21 order. Therefore, according to Geraldine, the Plaintiffs may not rely  
22 on PSJ Orders One and Two to establish a nondischargeable claim  
23 against her under 11 U.S.C. § 523(a)(6).

---

24  
25 <sup>5</sup>For this reason, the Court finds without merit and disposes  
26 of summarily Geraldine's contention that the PSJ Orders One and Two  
cannot be used for collateral estoppel purposes in this proceeding  
because they disposed of the Van Dammes' claims against the  
Plaintiffs' not the Plaintiffs' claims against the Van Dammes.

1        Lee is inapposite. The finality of an order for collateral  
2 estoppel purposes was not at issue in that case. It addressed the  
3 issue of finality for purposes of appeal. In Lee, an unsuccessful  
4 plaintiff had filed a notice of appeal from an order granting summary  
5 judgment to the defendant but failed to file a notice of appeal from  
6 the judgment itself. The appellee moved to dismiss the appeal on the  
7 ground that the summary judgment order was not sufficiently final to  
8 be appealable. The Nevada Supreme Court denied the motion, based on  
9 the definition of finality contained in the Nevada Rules of Appellate  
10 Procedure.<sup>6</sup>

11        Finality has a different meaning in an appellate context than for  
12 purposes of collateral estoppel. In the latter context, an order is  
13 sufficiently final to be used for collateral estoppel purposes when  
14 a "firm determination" of the issue has been made. See Luben  
15 Industries, Inc. v. United States, 707 F.2d 1037, 1040 (9th Cir.  
16 1983), citing Restatement (Second) of Judgments § 13 (1982).<sup>7</sup>  
17 Moreover, while the PSJ Orders One and Two are each partial, taken  
18 together, they are final. Between them, they dispose of all of the  
19

---

20  
21        <sup>6</sup>In response to this citation, after the hearing, the  
22 Plaintiffs asked the Court to consider Allyn v. McDonald, 117 Nev.  
23 907 (2001) and Lee v. GNLV Corp., 117 Nev. 291 (2001), the  
24 appellate decision on the merits of the case cited by Geraldine.  
They do not explain why they view these decisions as significant to  
the issues presented here. The Court has reviewed them and does  
not find them helpful.

25        <sup>7</sup>Neither party has presented the Court with a relevant Nevada  
26 authority on this issue, and the Court has been unable to find any  
independently. In the absence of such authority, the Court  
predicts that the Nevada Supreme Court would follow the  
Restatement.

1 claims asserted in the State Court Counterclaim. While a summary  
2 judgment order disposing of all the claims in a counterclaim may not  
3 be appealed absent a certification by the court that there is no just  
4 reason for delay, see Century Inv. Corp. v. United States, 277 F.2d  
5 247, 250 (9th Cir. 1960), the Court concludes that such an order is  
6 sufficiently "firm" to be used for collateral estoppel purposes.

7 **2. Were Issues Critical to 11 U.S.C. § 523(a)(6) Claim**  
8 **"Adjudicated" in the State Court Action?**

9 The second issue presented is whether the willful and malicious  
10 nature of Geraldine's conduct was "adjudicated" in the State Court  
11 Action. A claim for willful and malicious injury under 11 U.S.C. §  
12 523(a)(6) contains three elements: (1) whether the actions taken were  
13 willful, (2) whether the actions taken were malicious, and (3) whether  
14 the actions resulted in injury to an entity other than the debtor or  
15 to property of the entity. 11 U.S.C. § 523(a)(6). The Plaintiffs  
16 seek to use the doctrine of collateral estoppel to obtain a  
17 determination on all three elements. They do not seek to use this  
18 doctrine to establish the amount of any recoverable damages, there  
19 having been no determination by the state court on this issue as to  
20 Geraldine when her bankruptcy case was filed.

21 There are two parts to the question of whether these elements  
22 were "adjudicated" in the State Court Action: (1) whether the issues  
23 were "actually litigated" and (2) whether the issues were "necessarily  
24 determined."

1                   **a. Actually Litigated**

2                   PSJ Order Two, which dismisses the Van Dammes' claims for  
3 trespass and malicious abuse of process, contains no determinations  
4 which would entitle the Plaintiffs to a nondischargeable claim against  
5 Geraldine on the basis of collateral estoppel. The Order simply  
6 dismisses the claims based on the Van Dammes' failure to offer any  
7 evidence to support the necessary elements of the claim. The  
8 Plaintiffs presumably rely on PSJ Order One, dismissing the Van  
9 Dammes' quiet title claim and granting the Plaintiffs' quiet title  
10 claim sua sponte. As noted by the Plaintiffs, in PSJ Order One, the  
11 state court found as follows:

12                   The Van Dammes willfully, intentionally and  
13 deliberately encroached upon the Trust Property  
14 by partially tearing down a wall on Van Damme  
15 property. Further, the Van Dammes willfully,  
16 intentionally and deliberately utilized portions  
17 of the demolished wall, along with remaining  
18 portions of their west slumpstone wall, to  
19 support a concrete, fiberglass, and concrete  
20 structure....The Van Dammes further trespassed  
21 onto the Hammer Trust Property by anchoring the  
22 pool features, and affixing the Grotto into the  
23 east wall of the Trust Property. Each of these  
24 actions by The Van Dammes was done willfully,  
25 intentionally and deliberately without consent  
26 from the Trust and in disregard of warnings to  
cease such action as next described.

PSJ Order One, p. 4, ll. 11-15, 23-28.

The court holds that each of the Van Dammes'  
above-found actions were malicious because those  
actions were without any just cause or excuse and  
were substantially certain to cause harm to the  
Trust Property and to cause emotional distress to  
the members of the Trust....

PSJ Order One, p. 5, 7-10.

1           This willful, intentional and deliberate  
2           misconduct of the Van Dammes caused the title of  
3           the Trust property to become uninsurable for  
4           title insurance as a "clear title" due to the  
5           encroachment; it caused a cloud on the title  
6           which completely restricted its ready conveyance  
7           to an arm's length buyer; and it caused an [sic]  
8           cloud on title which also destroyed its value as  
9           security for a loan.

10       PSJ Order One, p. 20, ll. 11-16.

11           The Van Dammes' failure to file an opposition to the Plaintiffs'  
12           motion for summary judgment on this claim does not prevent PSJ Order  
13           One from being used for collateral estoppel purposes. They were  
14           otherwise active litigants in the State Court Action. Moreover, even  
15           a default judgment may be used for collateral estoppel purposes. See  
16           In re Nourbakhsh, 67 F.3d 798 (9th Cir. 1995)(default judgment could  
17           be used for collateral estoppel purposes); In re Daily, 47 F.3d 365,  
18           368 (9th Cir. 1995). Although Nourbakhsh was decided under Florida  
19           law and Daily under federal law, bankruptcy courts in the 9th Circuit  
20           have followed their holdings under the laws of their own states. See,  
21           e.g., In re Younie, 211 B.R. 367 (Bankr. 9th Cir. 1997)(California  
22           law); In re Jung Sup Lee, 335 B.R. 130 (Bankr. 9th Cir.  
23           2005)(Washington law); In re Goddard, 2009 WL 1636387, \*8  
24           (2009)(Arizona law). The Court predicts that Nevada would follow  
25           these holdings as well.

26           In sum, the Court concludes that the issues of wilfullness,  
         malice, and resulting injury to an entity other than the debtor or  
         that entity's property were actually litigated and determined in the  
         State Court Action. See In re Zelis, 66 F.3d 205, 208 (9th Cir.  
         1995).

1           **b. Necessarily Decided**

2           The second half of the "adjudication" test requires that the  
3 issues actually litigated and determined in the prior action be  
4 necessarily determined in rendering judgment on the claim or claims  
5 in question. See Segal v. American Tele. & Tele. Co., 606 F.2d 842,  
6 845 (9th Cir. 1979)(per curiam); Restatement (Second) of Judgments §  
7 27 cmt. j (1980). As noted above, the findings giving rise to the  
8 state court's determination that the Van Dammes acted willfully and  
9 maliciously were contained solely in PSJ One. The only claim ruled  
10 upon in PSJ One was the quiet title claim.

11           An action to quiet title is brought to establish a party's title  
12 to real property against an adverse claimant. To obtain such a  
13 ruling, under California law,<sup>8</sup> the following elements must be  
14 established: "(1) a description of the real property that is the  
15 subject of the action, (2) the title of the plaintiff as to which a  
16 determination...is sought and the basis of the title, (3) the adverse  
17 claims to the title of the plaintiff against which a determination is  
18 sought, (4) the date as of which the determination is sought, and (5)  
19 a prayer for the determination of the title of the plaintiff against  
20 the adverse claims." Madrid v. J.P. Morgan Chase Bank, N.A., 2009  
21 WL 3255880, \*5 (E.D. Cal.).

22           The state of mind or motive of the party making the adverse  
23 assertion of title to the real property is clearly irrelevant to the  
24

---

25  
26           <sup>8</sup>Again, in the absence of authority to the contrary, the Court  
will predict that the Nevada Supreme Court would follow California  
law in this respect.



1 determination of a quiet title claim. Thus, the state court's  
2 findings and holdings with respect to the Van Dammes' willful and  
3 malicious conduct were not "necessarily determined" in connection with  
4 the quiet title claim and thus may not be used for collateral estoppel  
5 purposes in the Bankruptcy Court Action.

#### 6 **CONCLUSION**

7 Geraldine's motion for judgment on the pleadings will be denied.  
8 The Plaintiffs' motion for summary judgment will also be denied.

9 The allegations of the Bankruptcy Court Complaint are sufficient  
10 to state a claim under 11 U.S.C. § 523(a)(6). By referring to certain  
11 actions performed by the Van Dammes, the allegations were necessarily  
12 directed against Geraldine as well as Armin. They did not have to  
13 separately state their allegations against Geraldine and Armin.  
14 Finally, the PSJ Orders One and Two will not be disregarded as a  
15 sanction for the Plaintiffs' violation of the automatic stay. There  
16 was no such violation. In any event, the Court has not relied on the  
17 findings and conclusions in the PSJ Orders One and Two in ruling on  
18 this motion. Counsel for the Plaintiffs is directed to submit a  
19 proposed form of order in accordance with this decision.

20 The motion for summary judgment will also be denied. The PSJ  
21 Orders One and Two contain findings and conclusions that are  
22 sufficiently "firm" to be used for collateral estoppel purposes. The  
23 elements of a claim under 11 U.S.C. § 523(a)(6)--willfulness, malice,  
24 and injury to person or property--were "actually litigated" in the  
25 State Court Action. However, they were not "necessarily determined"  
26 in the context of a determination of a quiet title claim. Counsel for

1 Geraldine is directed to submit a proposed form of judgment in  
2 accordance with this decision.

3 END OF DOCUMENT  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

COURT SERVICE LIST

Mariam S. Marshall  
Law Offices of Marshall and Ramos  
350 Frank H. Ogawa Plaza #600  
Oakland, CA 94612

Christina Ann.Marie DiEdoardo  
Law Office of Christina DiEdoardo  
201 Spear Street #1100  
San Francisco, CA 94105